

## MEETING RECORD

**NAME OF GROUP:** City Board of Zoning Appeals

**DATE, TIME AND**

**PLACE OF MEETING:** Friday, April 26, 2002, 1:30 p.m., City Council Chambers,  
County-City Building, 555 South 10<sup>th</sup> Street, Lincoln, Nebraska

**MEMBERS AND OTHERS**

**IN ATTENDANCE:**

<b>Members:</b>	Gerry Krieser, Linda Wibbels, George Hancock, Gene Carroll and Tom Wanser
<b>Others:</b>	Tonya Skinner (City Law Dept), Rodger Harris (Building & Safety), Jason Reynolds and Missy Minner (Planning Dept), applicants and other interested parties.

**STATED PURPOSE**

**OF THE MEETING:** Regular Monthly Meeting of the City Board of Zoning Appeals

Chair Hancock called the meeting to order and requested a motion approving the minutes of the March 29, 2002 meeting. Motion for approval made by Wanser, seconded by Carroll. Motion for approval carried 3-0; Carroll, Wanser and Hancock voting 'yes'; Wibbels and Krieser abstaining.

### City Board of Zoning Appeals No. 2327

Requested by Duane Thoene for a variance to increase the occupancy coverage of the required rear yard by an accessory building and a variance to reduce the distance that a garage is entered from the alley on property generally located at 1320 C Street.

### PUBLIC HEARING

April 26, 2002

Duane Thoene appeared. He is looking to replace his garage with one that has access from the alley rather than the street. The area to the north of the existing garage is a patio that does not have much privacy and is surrounded by parking lots. This property is in a high density area and the new garage would allow him to get all his vehicles off the street. He has a pickup, a van and a motorcycle. The new garage would also have an area for a work shop. His proposal would give him more privacy and make his yard feel more open. If he has to build the garage further in, there is a large elm tree and a small apple tree that would have to be removed. He presented the Board two letters from neighbors who are in favor of his proposal. The new garage would line up with his neighbor's garage.

Ken Winston, vice president of the Near South Neighborhood Association appeared. He asked the Board to consider the request from the association to delay action on this appeal and Appeal # 2329 so that the property owners can present their proposals to them at the next association meeting in May. He pointed out that they are not necessarily opposed to the appeals, they just ask that a presentation be made to the association so that it can take a stand on the issue. He understands that the neighborhood association did not receive much notice prior to the hearing.

Wibbels suggested that the Board look at each appeal individually and decide whether or not to act on it.

Reynolds indicated that a letter was sent to the president of the Near South Neighborhood Association on

April 16. He added that the Planning Department is not required to notify the neighborhood associations, it does so as a courtesy.

With no one further appearing, the public hearing was closed.

Wanser moved to act on the applications referenced in the letter from the Near South Neighborhood Association at the April meeting, seconded by Krieser.

Hancock stated that while he respects the interests of the neighborhood, he was of the opinion that this is a communication problem between the applicant and the association. It is not appropriate for the Board to police the notifications.

Wibbels disagreed. She felt that it was appropriate for the Board to help the neighborhoods and applicants through the technical duties of the Board by giving them a little more time.

Motion to act on the applications carried 4-1; Wanser, Krieser, Carroll and Hancock voting 'yes'; Wibbels voting 'no'.

#### **ACTION**

**April 26, 2002**

Wibbels moved approval. Motion for approval died for lack of second.

Carroll moved denial, seconded by Wanser.

Carroll stated that he was not in favor of the application based upon the Public Works request for a 10' minimum for setback. This creates a safety concern. Additionally, the applicant has enough room to build a double stall garage that would fit within the zoning requirements.

Motion for denial carried 4-1; Carroll, Wanser, Krieser and Hancock voting 'yes'; Wibbels voting 'no'.

#### **City Board of Zoning Appeals No. 2329**

**Requested by Sara Stephenson for a variance to lot area on property generally located at 1917 S 29<sup>th</sup> Street.**

#### **PUBLIC HEARING**

**April 26, 2002**

Sara Stephenson appeared. She indicated that this house is a duplex with an apartment in the basement. It was built around 1939. She has used this as a duplex since she purchased the property in 1990 from the Champ estate.

She pointed out that the property at 1721/1723 South 27<sup>th</sup> is also a duplex. That lot is the same size as this one. This is a huge house for this area. It is not appropriate for a single family dwelling because there is no yard. A duplex is the only reasonable use. She added that the size of the lot was not reduced when South 27<sup>th</sup> Street was widened, but it seems smaller because they took so much of the right of way.

Hancock asked staff how the apartment Ms. Stephenson referred to got built. Harris stated that he did not have those records with him, but would get the requested information in time for the Board's action on this item. Hancock then asked if the basement apartment meets the code as a dwelling unit. Harris stated that there is some question about how many units existed. No one has been able to show evidence, and Building & Safety can not find record, that the use has continued so that it could be grand-fathered. He was not sure if it meets today's codes because there has been no inspection that he knows of. He pointed out that it very well may.

Ariellas Zinn-Dorf appeared. She and her husband and baby just moved in the upstairs apartment in July. They feel lucky to have found such a huge apartment and great landlord. She stated that she can't imagine anything other than an apartment here.

Deborah Brown appeared. She has lived a few doors to the south of this property for about six months and would like it to be returned to a single family dwelling to maintain the integrity of the neighborhood and reduce traffic in the area. She was not aware of a particular problem, but that was her general opinion.

With no one further appearing, the public hearing was closed.

#### **ACTION**

**April 26, 2002**

Wanser moved approval, seconded by Wibbels.

Harris stated that the duplex at 1721 S 27<sup>th</sup> Street was constructed in 1976. The owner of that property received approval of a variance of lot area in 1976. The variance was granted for the original permit for that specific property.

Wanser was of the opinion that this is a betterment of the neighborhood because you know the exact number of people moving in. This is a duplex now and has been a duplex. He saw no reason to change it now.

Hancock pointed out that this is reaching for the peculiar, unusual or exceptional circumstance required for the Board to approve a variance.

Motion for approval carried 5-0; Wanser, Wibbels, Krieser, Carroll and Hancock voting 'yes'.

#### **City Board of Zoning Appeals No. 2330**

**Requested by Rosemarie Markus for a variance to rear yard setback on property generally located at 1421 S Folsom Street.**

#### **PUBLIC HEARING**

**April 26, 2002**

Reynolds pointed out a correction to the staff report on page 27, staff finding number 1. The proposed garage is 36 x 50'.

Rosemarie Markus appeared. She is a WIC building dealer. The owner of the property asked her to testify on his behalf. The proposed building is 36 x 50. The material is there. The regional supervisor for WIC felt that it would be best to move the building a couple feet from the proposed location on the original plan. They received a permit to stay 14' from line and now are asking to move 2' closer to the back lot line. This will allow them to save some very large, well established trees. Some of the elderly neighbors have signed a statement in support of the appeal. They meet all the other setbacks.

Dennis Salvage appeared. He has lived across the alley from this property for about 25 years. The trees are big and benefit everyone. He felt it would be a shame to force the removal of the trees. The trees shade his backyard. He would like his neighbor to be able to have the garage.

Richard Stromer appeared on behalf of his mother who owns the adjoining property. He has power of attorney for her. Neither he or his mother have a problem with the reduction to 12' on the west side of the property. The trees provide ample shade for many of the neighbors. He has known the property owner all his life and would like to see the Board grant his appeal. He stated that this will beautify the area by providing storage space and housing vehicles.

With no one further appearing, the public hearing was closed.

## **ACTION**

**April 26, 2002**

Carroll moved approval, seconded by Wanser.

Carroll was in favor of the appeal because it only increases the area of occupancy in the rear yard by less than 5% . He believes this is a good use for the back of the property. It fits in with the neighborhood and causes no safety concerns.

Hancock stated that this property has an unusual physical arrangement therefore meeting the requirement of the Board for the granting of a variance.

Motion for approval carried 5-0; Carroll, Wanser, Krieser, Wibbels and Hancock voting 'yes'.

## **City Board of Zoning Appeals No. 2331**

**Requested by Erin McGovern for variances to adjust the minimum lot width, side yard setback, and minimum lot area on property generally located at 3111 R Street.**

## **PUBLIC HEARING**

**April 26, 2002**

Erin McGovern appeared. She is half owner of the property at 3111 R Street. Her friend who owns the property with her is in a class and unable to testify. She read a letter he submitted, which mirrors her opinion, into the record. A copy of which is attached and incorporated herein.

The lot is 46' wide, which matches all of the lots on that street but is 4' narrower than today's standards. This is a beautiful 4,000 square foot home which is too big for two people. The people who would reside in the group home are developmentally disabled. None of them drive. They all have jobs. She doesn't

intend to be an absentee landlord. She will have the right to go in and make sure the property is being taken care of.

Wibbels asked staff if this use permit is contingent on the approval of the variance. Harris stated that this is an allowed use. The application is before the Board because it must meet the district requirements.

Bill Buell appeared. He owns the property at 3119 R Street and the property directly to the south. He has been in the neighborhood for 13 years. The area has a very high density. Off-street parking is at a premium. There are two schools within four blocks of each other. He spoke with some of the people in the neighborhood. Several people with families were concerned about the type of people who would reside there and what type of permit this is. His concern is that this is a neighborhood that needs some help. It is tough to rent properties in the area because of safety and parking problems. He realizes the need for this type of housing. His general concern is that it will add quite a few more people to the neighborhood.

With no one further appearing, the public hearing was closed.

## **ACTION**

**April 26, 2002**

Wanser moved to approve the variance limited to the group home use only, seconded by Carroll.

Wanser stated that it is appropriate to help those who are less fortunate whenever we are in a situation to do so. The Board has the authority to do so in this instance.

Skinner pointed out that the Board is not being called on to approve the use. If they base their approval on the use, the variance is faulty.

Motion to approved the variance limited to the group home use carried 5-0; Wanser, Carroll, Krieser, Wibbels and Hancock voting 'yes'.